

APPEAL NO. 020708
FILED MAY 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 22, 2002. With regard to the issue before her, the hearing officer determined that the respondent (claimant herein) was entitled to supplemental income benefits (SIBs) for the third quarter. The appellant (carrier herein) files a request for review, arguing that the hearing officer erred in finding that the claimant had returned to work in a position which was relatively equal to his ability to work during the qualifying period for the third quarter. The carrier also contends that the hearing officer erred both in finding that the claimant's underemployment during the qualifying period was a direct result of his impairment and in finding that the claimant made a good faith effort to seek employment during the qualifying period. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this case are both the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1) and the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2).

The parties stipulated that on _____, the claimant sustained a compensable lumbar spine injury resulting in a 34% impairment rating, and that the qualifying period for the third quarter was from July 21 through October 19, 2001. The evidence indicated that the claimant was injured while working as a truck driver and that the compensable injury includes paraparesis secondary to a spinal injury. As a result, the claimant does not have sensation in his legs but is able to ambulate short distances with the use of braces on his lower extremities. The claimant testified that during the qualifying period he, along with two partners, operated a lawn service, with the claimant cutting grass using a riding lawn mower and his partners doing the trimming and cleanup. The partners split the profits from the lawn business, and the claimant testified that his share of the profits during the qualifying period was \$659.96. The claimant testified that he worked approximately 20 hours per week at this business. There was medical evidence that the claimant was restricted to working four hours per day.

We have previously held that both the question of whether the claimant made a good faith job search and whether the claimant's unemployment was a direct result of his impairment are questions of fact. Texas Workers' Compensation Commission Appeal No.

94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We have stated that a finding of "direct result" is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. There is certainly evidence in the record to this effect.

Rule 130.102(d)(1) provides that a claimant has made a good faith effort to obtain employment commensurate with the claimant's ability if the claimant has returned to work "in a position which is relatively equal to the injured employee's ability to work." The hearing officer found that during the qualifying period, the claimant's self-employment (with the lawn service) was relatively equal to his ability to work at that time. Whether the claimant returned to work in a position relatively equal to the injured employee's ability to work is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 011787, decided September 21, 2001. Applying the standard of review set out above, we find no basis to overturn the hearing officer's finding that the claimant, in good faith, sought to obtain employment commensurate with his ability to work.

A claimant need only show good faith by complying with any one of the subsections of Rule 130.102(d). Texas Workers' Compensation Commission Appeal No. 020713, decided April 17, 2002. In addition, if the claimant complies with Rule 130.102(d)(1) during any portion of the qualifying period, that will satisfy the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2).

The hearing officer did not err in determining that the claimant was entitled to SIBs for the third quarter, and her factual determinations are supported by the evidence and are not against the great weight and preponderance of the evidence. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **NATIONAL AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEPHEN C. CARLIN
13155 NOEL ROAD
900 THREE GALLERIA TOWER
DALLAS, TEXAS 75240.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Roy L. Warren
Appeals Judge